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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Designations of Developing and Least-Developed Countries under the

Countervailing Duty Law

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The U.S. Trade Representative is designating World Trade Organization (WTO) Members that are eligible for special *de minimis* countervailable subsidy and negligible import volume standards under the countervailing duty (CVD) law. Elsewhere in this issue of the *Federal Register*, the U.S. Trade Representative is removing the Office of the United States Trade Representative's rulesthat contain the designations superseded by this notice.

DATES: The designations are applicable as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: David P. Lyons, Assistant General Counsel, at 202-395-9446, or Roy Malmrose, Director for Industrial Subsidies, at 202-395-9542.

SUPPLEMENTARY INFORMATION:

A. General Background

In the Uruguay Round Agreements Act (URAA), Pub. L. No. 103-465, Congress amended the CVD law to conform to U.S. obligations under the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Under the SCM Agreement, WTO Members that have not yet reached the status of a developed country are entitled to

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special treatment for purposes of countervailing measures. Specifically, imports from such Members are subject to different thresholds for purposes of determining whether countervailable subsidies are *de minimis* and whether import volumes are negligible.

Under section 771(36) of the Tariff Act of 1930, as amended (the Act), 19 U.S.C. 1677(36), Congress delegated to the U.S. Trade Representative the responsibility for designating those WTO Members whose imports are subject to these special thresholds. In addition, section 771(36)(D) requires the U.S. Trade Representative to publish a list of designations, updated as necessary, in the *Federal Register*. This notice implements the requirements of section 771(36)(D).

On June 2, 1998, the U.S. Trade Representative published an interim final rule (1998 rule) designating Subsidy Agreement countries eligible for special *de minimis* countervailable subsidy and negligible import volume standards under the CVD law. *See* 63 FR 29945. "Subsidies Agreement country" is defined in section 701(b) of the Act, 19 U.S.C. 1671(b), and includes countries that are WTO Members. The U.S. Trade Representative is revising the lists in the 1998 rule, as described below, and removing the 1998 rule because it now is obsolete.

B. Explanation of the List

1. Introduction

For purposes of countervailing measures, the SCM Agreement extends special and differential treatment to developing and least-developed Members in the following manner:

De Minimis Thresholds: Under Article 11.9 of the SCM Agreement, authorities must terminate a CVD investigation if the amount of the subsidy is *de minimis*, which

normally is defined as less than 1 percent *ad valorem*. Under Article 27.10(a), however, for a developing Member the *de minimis* standard is 2 percent or less. Consistent with Article 27.11 and section 703(b)(4) of the Act, the 2 percent *de minimis* threshold also now applies to least-developed countries.

Negligible Import Volumes: Under Article 11.9, authorities must terminate a CVD investigation if the volume of subsidized imports from a country is negligible. Under the CVD law, imports from an individual country normally are considered negligible if they are less than 3 percent of total imports of a product into the United States. Imports are not considered negligible if the aggregate volume of imports from all countries whose individual volumes are less than 3 percent exceeds 7 percent of all such merchandise. However, under Article 27.10(b) and section 771(24)(B) of the Act, imports from a developing or least-developed Member are considered negligible if the import volume is less than 4 percent of total imports, unless the aggregate volume of imports from countries whose individual volumes are less than 4 percent exceeds 9 percent.

In the URAA, Congress incorporated into the CVD law the SCM Agreement standards for *de minimis* thresholds and negligible import volumes. Section 703(b)(4)(B)-(D) of the Act, 19 U.S.C. 1671b(b)(4)(B)-(D), incorporates the *de minimis* standards, while section 771(24)(B), 19 U.S.C. 1677(24)(B), incorporates the negligible import standards. However, in the statute itself, Congress did not identify by name those WTO Members eligible for special treatment. Instead, section 267 of the URAA added section 771(36) to the Act, which delegates to the U.S. Trade Representative the responsibility to designate those WTO Members subject to special standards for *de minimis* and negligible import volume. In addition, section 771(36) requires the U.S. Trade Representative to

publish in the *Federal Register*, and update as necessary, a list of the Members designated as eligible for special treatment under the CVD law.

The effect of these designations is limited to Title VII of the Act. Specifically, section 771(36)(E) of the Act provides that the fact that a WTO Member is designated in the list as developing or least-developed has no effect on how that Member may be classified with respect to any other law.

2. Data Sources

In making the designations, the U.S. Trade Representative relied on per capita gross national income (GNI) data from the World Bank and trade data from the Trade Data Monitor, which contains official data from national statistical bureaus, customs authorities, central banks, and other government agencies.

3. Designation of WTO Members as Least-Developed Countries

As explained above, the distinction between developing and least-developed countries no longer matters for purposes of the *de minimis* threshold: both are eligible for the same 2 percent rate. Nonetheless, for clarity and consistent with section 771(36) of the Act, this notice separately identifies developing and least-developed countries. The list of WTO Members that are least-developed countries is derived from Annex VII to the SCM Agreement, which describes least-developed countries as those designated by the United Nations (Annex VII(a)) and named in Annex VII(b)), provided the per capita GNP has not reached \$1,000 per annum. A number of WTO Members are included on the United Nations list of least-developed countries, ¹ and several more are included under

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¹ United Nations World Economic Situation and Prospects (2019), p. 173, available at https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/WESP2019_BOOK-ANNEX-en.pdf.

Annex VII(b) based upon their GNI per capita at constant 1990 dollars: Côte d'Ivoire, Ghana, Honduras, Kenya, Nicaragua, Nigeria, Pakistan, Senegal, and Zimbabwe.²

C. Designation of WTO Members Eligible for 2 Percent *De Minimis* Standard

1. Introduction

Based on section 771(36)(D) of the Act, in determining which WTO Members should be considered as developing and, thus, eligible for the 2 percent *de minimis* standard, the U.S. Trade Representative has considered appropriate economic, trade, and other factors, including the level of economic development of a country (based on a review of the country's per capita GNI) and a country's share of world trade. The U.S. Trade Representative developed the list of Members eligible for the 2 percent *de minimis* standard based on the following criteria: (1) per capita GNI, (2) share of world trade, and (3) other factors such as Organization for Economic Co-operation and Development (OECD) membership or application for membership, European Union (EU) membership, and Group of Twenty (G20) membership.

2. Per Capita GNI

Similar to the 1998 rule, the U.S. Trade Representative relied on the World Bank threshold separating "high income" countries from those with lower per capita GNIs.³ This means that WTO Members with a per capita GNI below \$12,375 were treated as

² See Doha Ministerial Decision on Implementation-Related Issues and Concerns, WT/MIN(01)17 (November 20, 2001) (specifying that Annex VII(b) is to list Members until their GNP per capita reaches \$1,000 in constant 1990 U.S. dollars for three consecutive years; see also Updating GNP Per Capita for Members Listed in Annex VII(b) as Foreseen in Paragraph 10.1 of the Doha Ministerial Decision and in Accordance with the Methodology in G/SCM/38, G/SCM/110/Add.16 (May 14, 2019) (circulating updated calculations by the Secretariat).

³ The 1998 rule used per capita gross national product rather than GNI. The most recent World Bank data set this dividing line at \$12,375. *See* New country classifications by income level: 2019-2020, World Bank Data Blog, July 1, 2019, available at https://blogs.worldbank.org/opendata/new-country-classifications-income-level-2019-2020.

eligible for the 2 percent *de minimis* standard, subject to the other factors described below. Advantages of relying upon the World Bank high income designation include that it is straightforward to apply, based on a recognized GNI dividing line between developed and developing countries for purposes of the world's primary multilateral lending institution, and consistent with the test for beneficiary developing country status set out in the U.S. Generalized System of Preferences statute, section 502(e) of the Trade Act of 1974.

3. Share of World Trade

The U.S. Trade Representative also considered whether countries account for a significant share of world trade and, thus, should be treated as ineligible for the 2 percent *de minimis* standard. In the 1998 rule, the U.S. Trade Representative considered a share of world trade of 2 percent or more to be "significant" because of the commitment in the Statement of Administration Action (SAA), approved by the Congress along with the URAA, that Hong Kong, Korea, and Singapore would be ineligible for developing country treatment, and each of these countries accounted for a share of world trade in excess of 2 percent. The U.S. Trade Representative now considers 0.5 percent to be a more appropriate indicator of a "significant" share of world trade. According to the most recent available data from 2018, relatively few countries account for such a large share (*i.e.*, more than 0.5 percent) of world trade, and those that do include many of the wealthiest economies.

For purposes of U.S. CVD law, the U.S. Trade Representative therefore considers countries with a share of 0.5 percent or more of world trade to be developed countries.

Thus, Brazil, India, Indonesia, Malaysia, Thailand, and Viet Nam are ineligible for the 2

percent *de minimis* standard, notwithstanding that, based on the most recent World Bank data, each country has a per capita GNI below \$12,375.

4. Other Factors

Section 771(36)(D) of the Act contemplates that the U.S. Trade Representative may consider additional factors. To that end, consistent with the 1998 rule, the U.S. Trade Representative took into account EU membership, which indicates a relatively high level of economic development. In addition, under section 771(3) of the Act, the EU may be treated as a single country for purposes of the CVD law and, while uncommon, there have been CVD investigations against merchandise from the European Communities, rather than EU Member States. Because the EU is ineligible for the 2 percent *de minimis* standard, it would be anomalous to treat an individual EU Member as eligible for that standard. Accordingly, for purposes of U.S. CVD law, the U.S. Trade Representative considers all EU Members as developed countries. Thus, Bulgaria and Romania are ineligible for the 2 percent *de minimis* standard, notwithstanding that, based on the most recent World Bank data, each country has a per capita GNI below \$12,375.

The U.S. Trade Representative also took into account OECD membership and applications for OECD membership. The characterization of the OECD as a grouping of developed countries has been confirmed throughout its existence in a number of published OECD documents, and the OECD consistently has been viewed as, and acts itself in the capacity of, the principal organization of developed economies worldwide. Thus, by joining or applying to join the OECD, a country effectively has declared itself to be developed. Although the 1998 rule considered OECD membership only, given the significance of this self-designation, the act of applying to the OECD, in addition to

joining, indicates that a country is developed. Accordingly, the U.S. Trade Representative has determined that an OECD member or applicant should not be eligible for the 2 percent *de minimis* standard. Thus, Colombia and Costa Rica are ineligible for the 2 percent *de minimis* standard, notwithstanding that, based on the most recent World Bank data, each country has a per capita GNI below \$12,375.

The U.S. Trade Representative also took into account G20 membership. The G20 was established in September 1999, and so was not considered in the 1998 rule. The G20 is a preeminent forum for international economic cooperation, which brings together major economies and representatives of large international institutions such as the World Bank and International Monetary Fund. Given the global economic significance of the G20, and the collective economic weight of its membership (which accounts for large shares of global economic output and trade), G20 membership indicates that a country is developed. Thus, Argentina, Brazil, India, Indonesia, and South Africa are ineligible for the 2 percent *de minimis* standard, notwithstanding that, based on the most recent World Bank data, each country has a per capita GNI below \$12,375.

The U.S. Trade Representative did not consider social development indicators such as infant mortality rates, adult illiteracy rates, and life expectancy at birth, as a basis for changing a designation. The U.S. Trade Representative did consider that if a country considers itself a developed country, or has not declared itself a developing country in its accession to the WTO, it should not be considered a developing country for purposes of the SCM Agreement. Therefore, Albania, Armenia, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova, Montenegro, North Macedonia, and Ukraine are ineligible for the 2

percent *de minimis* standard, notwithstanding that, based on the most recent World Bank data, each country has a per capita GNI below \$12,375.

Furthermore, the 1998 rule omitted WTO Members that in the past had been, or could have been, considered as nonmarket economy countries not subject to the CVD law. Because nonmarket economies may now be subject to CVD law, the lists set forth in this notice do not omit nonmarket economies.

D. Designation of Developed Countries

The 1998 rule included a list of "developed countries" that did not qualify as developing or least developed. Because section 771(36) of the Act does not require the U.S. Trade Representative to maintain a list of developed countries, this notice does not include such a list.

E. List of Least-Developed and Developing Countries

In accordance with section 771(36) of the Act, imports from least-developed and developing WTO Members set forth in the following lists are subject to a *de minimis* standard of 2 percent and a negligible import standard of 4 percent:

Least-Developed Countries under Section 771(36)(B) of the Act

Afghanistan

Angola

Bangladesh

Benin

Burkina Faso

Burundi

Cambodia

Central African Republic

Chad

Côte d'Ivoire

Democratic Republic of the Congo

Djibouti

Gambia

Ghana

Guinea

Guinea-Bissau

Haiti

Honduras

Kenya

Lao People's Democratic Republic

Lesotho

Liberia

Madagascar

Malawi

Mali

Mauritania

Mozambique

Myanmar

Nepal

Nicaragua

Niger

Nigeria

Pakistan

Rwanda

Senegal

Sierra Leone

Solomon Islands

Tanzania

Togo

Uganda

Vanuatu

Yemen

Zambia

Zimbabwe

Developing Countries under Section 771(36)(A) of the Act

Bolivia

Botswana

Cabo Verde

Cameroon

Cuba

Dominica

Dominican Republic

Ecuador

Egypt

El Salvador

Eswatini

Fiji

Gabón

Grenada

Guatemala

Guyana

Jamaica

Jordan

Maldives

Mauritius

Mongolia

Morocco

Namibia

Papua New Guinea

Paraguay

Peru

Philippines

St. Lucia

St. Vincent & Grenadines

Samoa

Sri Lanka

Suriname

Tajikistan

Tonga

Tunisia

Venezuela

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